



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Ralph G. Tonseth

SUBJECT: RECOMMENDATION FOR AWARD DATE: March 25, 2004
OF TERMINAL A - FOOD AND
BEVERAGE CONCESSION AGREEMENT

Approved

Date

Council District: City - Wide

RECOMMENDATION

Approval of a Concession Agreement with Host International, Inc., for a non-exclusive food and beverage operation in Terminal A at the Norman Y. Mineta San Jose International Airport, for the period July 1, 2004 to June 30, 2009, with guaranteed minimum revenues to the City of \$1,033,754 from the date that Host commences operations through the end of the term, or a percentage of gross sales, whichever is greater.

BACKGROUND

McDonald's has provided food and beverage concession services in Terminal A for 13 years, initially as a subtenant of CA One Services and since 1994 as an independent concessionaire. On January 14, 2003, the City Council approved a First Amendment and Continuation Agreement to the Concession Agreement with McDonald's to: (a) extend the term through June 30, 2004; (b) institute a Minimum Annual Guarantee (MAG); and (c) reduce the percentage rent paid to the City from 13% of gross revenues to 8 %, to maintain parity with the Host International, Inc. agreement (Host provides all other food and beverage service in Terminals A and C).

Council further directed staff to issue a Request for Proposals (RFP) for continued food and beverage operations at the current McDonald's location after the June 30, 2004 expiration date.

ANALYSIS

Upon the execution of the extension of the McDonald's agreement, staff commenced the preparation of an RFP to ensure the timely award of an agreement to coincide with the expiration of the McDonald's agreement on June 30, 2004. A second goal was to set the term of the new agreement to coincide with the expiration of the current Host International agreement on June 30, 2009, which would provide maximum flexibility in future planning for food and beverage in not only Terminals A and C, but also in the phasing of construction of the North Concourse.

The following City policy requirements applicable to City concession agreements were included in the RFP:

- Living Wage
- Employee Retention
- Third Tier Review
- Street Pricing
- Nondiscrimination in Hiring
- Labor Peace

The RFP also stipulated the following requirements, minimum qualifications and terms and conditions:

- A hamburger and fries concept
- A minimum of three (3) consecutive years of experience within the past five (5) years of continuous ownership, management and operation of food and beverage concessions at airports or high customer traffic and volume venues
- Annual gross sales of at least one million five hundred thousand dollars (\$1,500,000) during each qualifying year
- A minimum aggregate rental guarantee to the City for the 4.5 year term of \$1,033,754
- A minimum capital investment in tenant improvements of \$340,000
- A 4.5 year term (to be co-terminus with the Host International, Inc. Food and Beverage Agreement)

The biddable item was the percentage of gross revenue to be paid to the City.

On December 16, 2003, 13 individuals, representing eight (8) different firms, attended the mandatory pre-proposal conference and tour. Staff reviewed the above-referenced City policy requirements and RFP terms and conditions at the pre-proposal conference, and attendees were given an opportunity to ask questions regarding any terms of the RFP (including the exemplar concession agreement that was included with the RFP) that required clarification.

Four of the eight firms that attended the pre-proposal conference indicated they were attending as observers only and did not plan to bid. On February 4, 2004, two (2) proposals were received

from Host International, Inc. and McDonald's Corporation. The other two potential proposers sent letters indicating that the capital investment amortized over the short term of the lease and the declining enplanements at the Airport presented a set of difficult economic barriers to overcome and that they therefore would not be submitting proposals.

Initial staff review determined that each of the two Proposers met the required minimum experience qualifications. Staff commenced further evaluation of both proposals. During the course of evaluation, staff, together with the concurrence of the City Attorney's Office, determined the McDonald's proposal, to be non-responsive. This decision was based on statements in the McDonald's proposal, that it was necessary to change the provisions of the City's exemplar agreement that was included as part of the RFP. McDonald's proposal included six (6) pages of revisions to the exemplar agreement, that McDonald's proposal stated were a "material portion" of its proposal that were "necessary" to be included in an agreement between McDonald's and the City. The revisions required by McDonald's included changes to the performance standards, standards for quality of product and services, living wage requirements and non-discrimination, to name a few.

The RFP clearly provided that by submitting a proposal, each proposer would agree to execute the exemplar agreement in substantially the form attached to the RFP. Because McDonald's proposal expressly provided that: (a) its revisions to the exemplar agreement were a "material portion" of its proposal that were "necessary" to be included in an agreement between McDonald's and the City; and (b) in the event of a conflict between the revisions in McDonald's proposal and the exemplar agreement, the revisions in McDonald's proposal would prevail, staff determined that McDonald's proposal was non-responsive.

The Technical Committee, composed of staff members with expertise in their respective areas of responsibility, continued its evaluation. Upon completion of its analysis, staff determined that the Host proposal met or exceeded the minimum requirements of the RFP.

The Host proposal included the following:

- 100 years of experience at over 70 airports around the world
- A Burger King Concept
- A minimum capital investment of \$380,000
- A percentage rent of 8% on sales up to \$1,000,000 and 12% on sales over \$1,000,000
- A temporary Max's Deli sandwich kiosk during construction
- Agreement with the City's Living Wage, Employee Retention, Third Tier Review, Street Pricing, Nondiscrimination in Hiring and Labor Peace policies
- Agreement with the terms and conditions of the City's exemplar concession agreement

Staff also evaluated the economic impact of both proposals. Based on the percentage rent proposed, the rent (based upon anticipated gross revenues) proposed in the Host submission exceeded that proposed by McDonald's.

Evaluation by the Office of Equality Assurance provided the following additional information: a) McDonald's current food and beverage concession agreement requires prevailing wages be paid to its employees; b) Host International, Inc.'s current food and beverage concession agreement also requires prevailing wages; c) Host has a bargaining agreement with the Hotel Employees and Restaurant Employees International Union, AFL-CIO, Local 19 (HERE) which expires on June 30, 2004; d) the new concession agreement requires living wages be paid to its employees; e) the Living Wage Policy provides that if the wages in the bargaining agreement are lower than the Living Wage Rate, the rate of pay shall be the Living Wage Rate, unless the bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Rate; and f) Consistent with the Living Wage Policy, if the new bargaining agreement between Host and HERE contains a supersession clause (as referenced in e) above), the McDonald's retention employees and Host's employees could be compensated at less than the Living Wage Rate.

PUBLIC OUTREACH

Letters of interest were mailed to 50 companies that previously indicated an interest in bidding on food and beverage concessions at the Airport. The RFP was also posted on the City's Internet Bid Line and advertised in the San Jose Mercury News and the Aviation News Network.

COST IMPLICATIONS

Not applicable.

COORDINATION

The Airport Commission at its regularly scheduled meeting on March 1, 2004, voted 4 to 2, with one absent, against approval of the award to Host International, Inc. They were uncomfortable with one of the two proposers being eliminated and only leaving the City with a choice of one. Staff evaluated the option of rebidding with a longer term, but based on past experience it was not a viable option.

This process and the concession agreement have been coordinated with the City Attorney's Office and the Departments of Finance/Risk Management and Public Works/Office of Equality Assurance.

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Resolutions 67380 and 71451, PP04-03-068

Ralph G. Tonseth
Director of Aviation

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